



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

MARGER JOHNSON & MCCOLLUM, P.C.
210 SW MORRISON STREET, SUITE 400
PORTLAND OR 97204

COPY MAILED

FEB 04 2010

In re Application of :
Barrie Gilbert :
Application No. 09/545,691 : **DECISION ON PETITION**
Filed: April 7, 2000 :
Attorney Docket No. 1482-132 :

This is a decision on the petition, filed October 12, 2009, which is being treated as a petition under 37 CFR 1.181 (no fee), requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

This application became abandoned as a result of petitioner's failure to file a complete and proper appeal brief within the time period provided in 37 CFR 41.37(a)(1). As a complete and proper appeal brief was not filed within one (1) month of the Notification of Non-Compliance with 37 CFR 41.37(c)(1), mailed October 13, 2006, and no extensions of time under the provisions of 37 CFR 1.136(a) were obtained, the appeal was dismissed and the proceedings as to the rejected claims were terminated. A Notice of Abandonment was mailed July 23, 2009.

Petitioner indicates that in situations as above where the proceedings as to the rejected claims are terminated, if there are allowed claims the application is not abandoned, but rather the application should be passed to issue if there are allowed claims. Reference is made to MPEP 1215.04 Dismissal of Appeal. The record shows that claims 2-3, 9-10, 13 and 16-26 were allowed with only claim 15 being rejected. MPEP 1215.04 clearly indicates in such a situation the application is not abandoned but passed to issue forthwith.

In view of the above, the holding of abandonment is hereby withdrawn and the application restored to pending status.

The application is forwarded to Technology Center AU 2618 for preparation of a Notice of Allowance and Issue Fee Due on the allowed claims.

Telephone inquiries concerning this decision should be directed to Carl Friedman at (571) 272-6842.

A handwritten signature in black ink, appearing to be 'Carl Friedman', with a long horizontal stroke extending to the right.

Carl Friedman
Petitions Examiner
Office of Petitions